

REMARKS

Amendments

The specification has been amended to correctly reflect the relationship between Figure 2 and the description in the specification.

Claim 1 has been amended to more clearly indicate that the strut is an element of the container of the present invention.

Claims 4 and 8 have been amended to correctly reflect the dependency of the claims.

Claims 12 and 13 have been amended to more completely describe the claimed embodiment where reversibly transformable struts and the floor pan support are integral and comprise a single reinforcement. Antecedent basis for this amendment is found at least in the specification at page 4, lines 32-34.

Attached hereto is a marked-up version of the changes made to the Specification and to the Claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made".

After entry of this amendment, Claims 1-5, and 8-17 remain pending in the application and are before the Examiner. No addition claims fee is believed necessary.

Summary of the Invention

The present invention relates to a container having a plurality of upstanding sidewalls interconnected by a floor pan, where at least one of the sidewalls is reinforceable with an upstanding strut, where the strut is removable from the sidewall without separation from the container itself.

Objections to Drawings under 37 C.F.R. §1.83(a)

The Examiner has objected to the drawings as not showing every feature specified in the claims and also has objected to Claims 2, 3, 5, 7-9, and 13-15 as not being represented within the drawings. Applicant traverses these objections related to these respective claims as follows.

Claim 2 - The Examiner states that "the strut being articulably joined to said sidewall at said proximal end" is not shown in the drawings. Applicant submits that the embodiment of a container having a strut which is articulably joined to the sidewall at the proximal end of the strut is clearly depicted in Figures 3, 4, and 5 of the application. Strut 42 is attached to the sidewall in this embodiment at the bottom of the sidewall via a hinge joint to a floor pan support which extends the full length of the floor pan such that the hinge

is at the intersection of the floor pan and the sidewall. Therefore, Figures 3, 4, and 5 clearly represent the features of Claim 2 and this objection should be withdrawn.

Claim 3 - The Examiner states that "the strut is joined to the container at a hinge juxtaposed with the floor pan" is not shown in the drawings. Applicant submits that the embodiment of a container having a strut which is articulably joined to the container at a hinge juxtaposed with the floor pan is also clearly depicted in Figures 3, 4, and 5 of the application. Strut 42 is attached to the sidewall in this embodiment at the bottom of the sidewall via a hinge joint to a floor pan support which extends the full length of the floor pan such that the hinge is juxtaposed to the floor pan at the intersection of the floor pan and the sidewall. Therefore, Figures 3, 4, and 5 clearly represent the features of Claim 3 and this objection should be withdrawn.

Claim 5 - The Examiner states that "the protruding tabs and slots arrangement" is not shown in the drawings. Applicant submits that the embodiment of a container having a tab and slot arrangement with the struts is clearly depicted in Figures 2, 3, 4, and 5 of the application. In fact, the figures depict an embodiment having a combination of two such attachment arrangements. In the figures, the distal end 46 of the strut 42 is bent to form a tab which is inserted into a slotted space below the flanged mouth of the container. Further, the distal end of the strut is shown to have cut slots through which tabs formed in the flange are inserted to further fasten the distal end of the strut to the container in order to support the sidewalls. Therefore, Figures 2, 3, 4, and 5 clearly represent the features of Claim 5 and this objection should be withdrawn.

Claim 7 - The Examiner states that "the strut having reinforcing ribs" is not shown in the drawings. Applicant submits that this objection is moot, given the fact that Claim 7 has been cancelled in the presented amendments.

Claim 13 and 15 - The Examiner states that "the first and second materials of dissimilar material" of Claim 13 and "the identical composition and second gauge being greater than the first gauge" of Claim 15 are not shown in the drawings. Applicant submits that Figures 2, 3, 4, and 5, which clearly depict separate elements for the container 10 and the reinforcement 40, in combination with the specification at page 7, lines 19 - 34, which clearly describe embodiments where the "container 10 comprises a first material and the reinforcement 40 comprises a second material, the first and second materials being dissimilar" and "... the container 10 may be comprised of a polymeric material having a first gauge. The struts 42 and/or floor pan 48 may be comprised of a polymeric material having a second gauge." teach one skilled in the art the embodiments claimed in Claims 13

and 15. Therefore, Applicant submits that the objection to claims 13 and 15 are improper and should also be withdrawn.

Rejection under 35 U.S.C. 112, first paragraph

The Examiner has rejected Claims 1-17 under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains. The Examiner objects to the word "strut" as used in the present application. The Examiner indicates that a strut is a bar or rod used to brace a structure against forces from the side. Applicant traverses this rejection.

Applicant submits that the word strut is perfectly applicable to the reinforcing element used to provide support to the sidewall of the container of the present invention. Using the Examiner's definition, the present invention clearly encompasses the use of rods and bars of different materials and geometries to provide support to the container. The fact that Applicant demonstrates preferred embodiments with reinforcing bars which comprise a panel if the strut has a width of at least 75% of the width of the corresponding sidewall (see definition at page 6, lines 15-17) does not preclude other possible geometries of reinforcing bars and rods. 35 U.S.C. §112, first paragraph requires clear and concise disclosure as to enable a person skilled in the art to make and use the invention. Further, §112 allows for the applicant to be his own lexicographer to clearly teach his invention. The specification, including the drawings, of the present application clearly teach the use of any rod or bar, i.e. strut, to reinforce the sidewalls of the container of the present invention. Therefore, Applicant requests that the rejection of Claims 1-17 under 35 U.S.C. §112, first paragraph be withdrawn.

Rejections under 35 U.S.C. §112, second paragraph

The Examiner has rejected Claims 13-15 under 35 U.S.C. §112, second paragraph as being indefinite as container terms with insufficient antecedent basis. Applicant traverses this rejection as applied to the amended claims. Claim 12 has been amended herein to reflect that the struts and floor pan support of the claim are integral and comprise a single reinforcement. Further, Claims 13 and 14 have been amended to use the reinforcement of Claim 12. Applicant submits that these amendments provide proper antecedent basis for Claims 13-15 and therefore the rejection should be withdrawn.

Rejections under 35 U.S.C. §102(b)

The Examiner has rejected Claims 1-4 and 6-9 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,002,194, issued to Nichols on March 26, 1992 (hereinafter "Nichols"). Applicant respectfully traverses this rejection.

In order for a claim to be anticipated by a reference, each and every element of the claim must be found in the single, prior-art reference. Kalman v. Kimberly-Clark Corp., 713 F.2d 760 (Fed. Cir. 1983), In re Bond, 910 F.2d 831 (Fed. Cir. 1990). Nichols relates to a reusable mesh shipping container for transportation of bulk liquid materials consisting of a box-like wire mesh outer container and a blow molded inner tank. The mesh outer container and the inner tank are two separate pieces such that the inner tank is easily removed when it is empty. The outer container is a complete box structure to contain the plastic bag-like inner tank, therefore there are no independent struts used to support the sidewalls of the inner tank.

In contrast, the container of the present invention, itself comprises both the basic container and at least one removable strut which is not separated from the container. In preferred embodiments, the strut is articulably joined to the sidewall. Applicant submits that Nichols does not teach the critical strut element of the present container, nor does it teach the requirement that the strut be removable from the sidewalls without separation from the container. Therefore, the containers of the above-identified application cannot be anticipated by Nichols and the rejection of Claims 1-4 and 6-9 should be withdrawn.

The Examiner has rejected Claims 10-13 and 16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,801,017, issued to Artusi on January 31, 1989 (hereinafter "Artusi"). Artusi relates to a container comprising an inner tray and an outer blank. It is critical to the invention that the rim of the blank and the edge strip of the tray are sealed together in order to increase the thermal stability of the geometry of the inner tray. Therefore, no elements of the blank is removable from the inner tray. This is in direct contrast to the struts of the present invention which reversibly transform between a first position where the struts provide reinforcement to the sidewalls and a second position where the struts do not provide any reinforcement. The containers of Artusi clearly do not provide this flexibility. Again, Applicant submits that Artusi does not teach each and every element of the present invention and therefore cannot anticipate the claims therein. Applicant respectfully requests that the rejection of Claims 10-13 and 16 over Artusi should be withdrawn.

conclusion
the tank is
described as
being made
in one piece
joined and
these panels
reinforce sides
of inner tank

Examiner believes
the cont. could be collapsed
w/ this inner tank in place
upon the outer cont. i.e.
w/o separation when
wall 16, 18 are
rotated away from
walls of inner tank

separate
shell

The Examiner has rejected Claims 1, 4, 5 and 10-13 under 35 U.S.C. §102(b) as being anticipated by U.K. Patent Application GB2194514A, published by inventor Harrison on March 9, 1988 (herein after "Harrison"). Harrison relates to composite packages comprising an inner container and an outer case permanently affixed to each other. The container and case are connected by engaging projections and apertures or bonding or sealing. The outer case does not have struts nor any other element which can be removed from a reinforcing position while remaining attached to the container. This is again in direct contrast to the struts of the present invention which reversibly transform between a first position where the struts provide reinforcement to the sidewalls and a second position where the struts do not provide any reinforcement. The containers of Harrison clearly do not provide this flexibility. Applicant submits that Harrison does not teach each and every element of the present invention and therefore cannot anticipate the claims therein. Applicant respectfully requests that the rejection of Claims 1, 4, 5 and 10-13 over Harrison should be withdrawn.

← not
limitation
in cl. 10

Rejection under 35 U.S.C. §103(a)

The Examiner has rejected Claim 14 under 35 U.S.C. §103(a) as being obvious over Artusi or Harrison. The Examiner states that Artusi and Harrison each disclose the invention except for the cardboard is not fluted and that it would be obvious to use fluted cardboard instead of the cardboard of Artusi. Applicant traverse this rejection.

To properly reject a claim under 35 U.S.C. §103, the prior art references must teach or suggest all of the claim limitations. MPEP §2143.03; In re Royka, 180 USPQ 580 (CCPA 1974). As described above neither Artusi nor Harrison teach or suggest all of the claim limitations of the containers of the present application. Neither Artusi nor Harrison teach containers comprising removable struts which reversibly transform between a first position where the struts provide reinforcement to the sidewalls and a second position where the struts do not provide any reinforcement. Therefore, the rejection of Claim 14 under 35 U.S.C. §103(a) is improper and should be withdrawn.

The Examiner has rejected Claim 15 under 35 U.S.C. §103(a) as being obvious over Harrison. The Examiner states that Harrison discloses the invention except for materials of identical composition and different gauge and that these modifications would be obvious. Again, Applicants submit, as described above, that Harrison does not disclose each and every element of the claimed invention and that this rejection of Claim 15 under 35 U.S.C. §103(a) is improper and should be withdrawn.

CONCLUSION

Applicant respectfully submits that for the reasons outlined above that Claims 1-5 and 8-17 are definite and properly enable one skilled in the art to produce the container of the above-identified application. Also, Applicant submits that the container defined in amended Claims 1-5 and 8-17 are clearly novel and nonobvious over the references cited by the Examiner, taken separately or together. For the reasons presented above Applicant requests that the rejections under 35 U.S.C. §§102(b), 103(a) and 112, first and second paragraph as applied to the amended claims be withdrawn and that Claims 1-5 and 8-17 be allowed.

Respectfully submitted,

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**Version with Markings to Show Changes Made
Amended Specification Paragraphs**

Page 3, Lines 13-25

Fig. [1] 2 depicts a preferred embodiment of a container 10 and associated reinforcement 40 according to the present invention. In the embodiment depicted in Fig. [1] 2, the container 10 includes a container 10 body preferably unitarily formed from sheet material. An optional cover 12 may be included and unitarily formed with the container 10. The container 10 may also include a closure for sealing the cover 12 and container 10. The cover 12 may be generally flat, as illustrated, or may have a convex inward or convex outward orientation, as desired. If the optional cover 12 and seal 14 are desired, a plug seal 14 may be utilized as is known in the art and illustrated by U.S. Patent Nos. 3,784,055, iss. Jan. 8, 1974 to Anderson, and 3,967,756, iss. July 19, 1976 to Barish, both of which are incorporated herein by reference. However, it is to be recognized that the cover 12 is an auxiliary feature and does not form part of the claimed invention. For certain embodiments, it is preferred that the cover 12 be substantially flat so that the container 10 is stackable.

Page 3, Line 33-Page 4, Line 7

The container 10 comprises a floor pan 22 and sidewalls 20 projecting outwardly from the floor pan 22. Preferably, in use, the sidewalls 20 project upwardly and terminate at an an [distal] end [46] forming the mouth 26 or opening of the container 10. The illustrated embodiment has four sidewalls 20. However, it is to be recognized the invention is not so limited.

Amended Claims

1. (Amended) A container having a plurality of upstanding sidewalls interconnected by a floor pan, and at least one upstanding strut, wherein at least one of said sidewalls [being] is reinforceable with an upstanding strut, said strut being removable from said sidewall without separation from said container.
4. (Amended) A container according to Claim [1] 2, wherein said strut is attachable to said container at said distal end of said strut.

8. (Amended) A container according to Claim [7] 5, wherein said strut comprises a panel, said panel being substantially coextensive of and attachable to a sidewall of said container.
12. (Amended) A container according to Claim 11, wherein said reversibly transformable struts and said floor pan support are integral and comprise a single reinforcement.
13. (Amended) A container according to Claim 11, wherein said container comprises a first material and said [contiguous planar member] reinforcement comprises a second material, said first material and said second material being dissimilar.
14. (Amended) A container according to Claim 13, wherein said [continuous planar member] reinforcement comprises fluted cardboard.